

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NIKERRAY MIDDLEBROOK,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 05-827-SLR
	:	
THOMAS CARROLL,	:	
Warden, and CARL C. DANBERG,	:	
Attorney General of the State of	:	
Delaware,	:	
	:	
Respondents.	:	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Nikerray Middlebrook, has applied for federal habeas relief, challenging his July 1997 conviction by a Delaware Superior Court jury for attempted first degree murder, first degree assault (as a lesser-included offense of attempted first degree murder), two counts of possession of a firearm during the commission of a felony, and possession of a deadly weapon by a person prohibited. D.I. 2. By the terms of the Court's order, the answer is due to be filed on February 27, 2006.

2. Within the last week and a half, counsel for respondents has filed two answers to federal habeas petitions and a motion to dismiss a federal habeas petition in this Court. In addition, the undersigned has been, and continues to be, working on other cases before this Court and the state courts. The Appeals Division has also been without a secretary since mid-December, and does not

anticipate her return for another month. In light of the situation, additional time is needed to complete the answer and have it reviewed in the ordinary course of business.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondents' workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' first request for an extension of time in this case.

5. Respondents submit that an extension of time to and including March 10, 2006, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759

DATE: February 23, 2006

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2006, I electronically filed a motion for extension of time and attachments with the Clerk of Court using CM/ECF. I also hereby certify that on February 23, 2006, I have mailed by United States Postal Service, the same documents to the following non-registered participant:

Nikerray Middlebrook
SBI No. 295569
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ Elizabeth R. McFarlan
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